

IN THE

OFFICE OF THE CLERK

Supreme Court of the United States

OCTOBER TERM, 1990

HOUSTON LAWYERS' ASSOCIATION, *et al.*,
Petitioners,
v.

ATTORNEY GENERAL OF TEXAS, *et al.*,
Respondents.

LEAGUE OF UNITED LATIN AMERICAN CITIZENS, *et al.*,
Petitioners,
v.

ATTORNEY GENERAL OF TEXAS, *et al.*,
Respondents.

**On Writs of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

SUPPLEMENTAL JOINT APPENDIX

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NOVEMBER 11, 1990 IN NO. 90-813, DECEMBER 14, 1990 IN NO. 90-974
CERTIORARI GRANTED JANUARY 18, 1991

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

LEAGUE OF UNITED LATIN AMERICAN CITIZENS
(LULAC), *et al.*,

Plaintiffs,

HOUSTON LAWYERS' ASSOCIATION, *et al.*,

Plaintiff-Intervenors

vs.

CIVIL ACTION #
MO 88-CA-154

JIM MATTOX, Attorney General of the State
of Texas, *et al.*,

Defendants

SHAROLYN WOOD, and F. HAROLD ENTZ,
Defendant-Intervenors

PLAINTIFFS' SECOND AMENDED COMPLAINT

I. INTRODUCTION

1. The members of Plaintiffs LULAC, LULAC COUNCIL #4434 and LULAC COUNCIL #4451 and the named individual Plaintiffs are Mexican-American and Black citizens of the State of Texas. They bring this action pursuant to 42 U.S.C. 1971, 1973, 1983, 1988 to redress a

denial, under color of state law, of rights, privileges or immunities secured to Plaintiffs by the said laws and by the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

2. Plaintiffs seek a declaratory judgment that the existing at large scheme of electing district judges in the target areas of the State of Texas violates Plaintiffs' civil rights in that such method illegally and/or unconstitutionally dilutes the voting strength of Mexican-American and Black electors; Plaintiffs seek a permanent injunction prohibiting the calling, holding, supervising or certifying of any future elections for district judges under the present at large scheme in the target areas; Plaintiffs seek the formation of a judicial districting scheme by which district judges in the target areas are elected from districts which include single member districts; Plaintiffs seek costs and attorneys' fees.

II. JURISDICTION

3. Jurisdiction is based upon 28 U.S.C. 1343 (3) & (4), upon causes of action arising from 42 U.S.C. 1971, 1973, 1983, & 1988, and under the Fourteenth and Fifteenth

Amendments to the U.S. Constitution. Declaratory relief is authorized by 28 U.S.C. 2201 & 2202 and by Rule 57, F.R.C.P.

III. PLAINTIFFS

4. Plaintiff LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC) is a statewide organization whose members are United States Citizens of Mexican American and black descent, and are resident taxpayers of the State of Texas, and are qualified to vote for district judges in the various counties.

5. LULAC Council No. 4434 is a local organization whose membership is composed of United States Citizens most of whom are of Mexican-American and Black descent, and are resident taxpayers of the State of Texas, and are qualified to vote for district judges in Midland County. LULAC Council No. 4451 is a local organization whose membership is composed of United States Citizens most of whom are of Mexican-American or Black descent, and are resident taxpayers of the State of Texas, and are qualified to vote for district judges in Ector County.

6. Plaintiff CHRISTINA MORENO is a United States Citizen of Mexican-American descent and is a resident taxpayer of the State of Texas, and is qualified to vote for district judges in Midland County.

7. Plaintiff AQUILLA WATSON is a Black United States Citizen and is a resident taxpayer of the State of Texas, and is qualified to vote for district judges in Midland County.

8. Plaintiff MATTHEW W. PLUMMER, Sr. is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Harris County.

9. Plaintiff JIM CONLEY is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Bexar County.

10. Plaintiff VOLMA OVERTON is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Travis County.

11. Plaintiff WILLARD PEN CONAT is a Black

United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Fort Bend County.

12. Plaintiff GENE COLINS is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Ector County.

13. Plaintiff AL PRICE is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Jefferson County.

14. Plaintiff THEODORE HOGROBROOKS is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Smith County.

15. Plaintiff ERNEST M. DECKARD is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Smith County.

16. Plaintiff MARY ELLEN HICKS is a Black United States Citizen and is a resident taxpayer of the State of Texas; she is qualified to vote for district judges in

Tarrant County.

16a. Plaintiff REV. JAMES THOMAS is a Black United States Citizen and is a resident taxpayer of the State of Texas; he is qualified to vote for district judges in Galveston County.

IV. PLAINTIFF INTERVENORS

17. Members of the HOUSTON LAWYERS' ASSOCIATION, ALICE BONNER, WELDON BERRY, FRANCIS WILLIAMS, REV. WILLIAM LAWSON, DELOYD T. PARKER, BENNIE McGINTY, JESSE OLIVER, FRED TINSLEY, JOAN WINN WHITE, and Members of THE BLACK LEGISLATIVE CAUCUS are Black United States Citizens and are resident taxpayers of the State of Texas; they are qualified to vote for district judges in Texas.

V. DEFENDANTS

18. Defendant JIM MATTOX is the Attorney-General of the State of Texas, and is the chief law enforcement officer of the state and as such, is charged with the responsibility to enforce the laws of the state. Defendant

JACK RAINS is the Secretary of State of the State of Texas, and is the chief elections officer of the state and as such, is charged with the responsibility of administering the election laws of the state. Defendants THOMAS R. PHILLIPS, JOHN F. ONION, RON CHAPMAN, THOMAS J. STOVALL, JAMES F. CLAWSON, JR., JOE E KELLY, JOE B. EVINS, SAM M. PAXSON, WELDON KIRK, CHARLES J. MURRAY, RAY D. ANDERSON, LEONARD DAVIS and JOE SPURLOCK, II are members of the JUDICIAL DISTRICTS BOARD created by Art. V. Sec. 7a of the Texas Constitution, and pursuant to Art. 24.941 et. seq. Texas Government Code. They have the duty to reapportion judicial districts within the State of Texas.

VI. FACTUAL ALLEGATIONS

19. District judges are elected either from judicial districts which are coterminous with and wholly contained within a county, or from judicial districts which are composed of several entire counties.

20. In those counties which contain more than one

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judicial district, the present election system is an at large scheme with the equivalent of numbered places, the majority rule requirement, and staggered terms.

21. The following counties, which are being challenged in this lawsuit, elect the following number of district judges and, according to the 1980 U.S. Census, contain the following population:

<u>COUNTY</u>	# OF JUDGES <u>ELECTED</u>	TOTAL <u>POP.</u>	S.S. <u>POP. (%)</u>	BLK <u>POP. (%)</u>	CM.%*
Harris	59	2,409,544	369,075(15.3)	473,698(19.7)	35.0
Dallas	36	1,556,549	154,560(9.9)	287,613(18.5)	28.4
Bexar	19	988,800	460,911(46.6)	69,201(7.0)	53.6
Tarrant	23	860,880	67,632(7.9)	101,183(11.8)	19.7
Travis	13	419,335	72,271(17.2)	44,988(10.7)	27.9
Jefferson	8	250,938	10,279(4.1)	70,810(28.2)	32.3
Lubbock	5	211,651	41,428(19.6)	15,780 (7.5)	27.0
Galveston	5	195,940	23,557(12.0)	36,328(18.5)	30.6
McLennan	4	170,755	14,988(8.8)	27,254(16.0)	24.7
Fort Bend	3	130,846	26,656(20.4)	20,420(15.6)	36.0
Smith	4	128,366	4,037(3.1)	28,215(22.0)	25.1

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Ector	4	115,374	24,831(21.5)	5,154 (4.5)	26.0
Midland	3	82,636	12,323(14.9)	7,119 (8.6)	23.5
El Paso, Hudspeth, and Culberson**	11	485,942	282,691(58.2)	18,162 (3.7)	61.9

* Combined Minority

** Eight district judges are elected at large within El Paso County; the other three are elected at large within the three county area of El Paso, Hudspeth, and Culberson Counties.

22. The following counties comprise a judicial area that elects three (3) judges at large: EL PASO, CULBERSON, and HUDSPETH. This area contains enough minorities that are sufficiently geographically concentrated that if single member districts were created, at least one of those districts would be able to elect a minority.

23. The above areas elect 197 district judges. Each area contains enough minorities that are sufficiently geographically concentrated so that if single member districts were created, at least one of those districts in each area would be able to elect a minority.

24. Upon information and belief, in the above named areas minorities are politically cohesive.

25. Upon information and belief in the above cited areas, the white majority votes sufficiently as a block to enable it--in the absence of special circumstances, such as the minority candidate running unopposed--usually to defeat the minority's preferred candidate.

26. Upon information and belief, in the above challenged areas, the at large election scheme interacts with social and historical conditions to cause an inequality in the opportunity of hispanic and/or black voters to elect representatives of their choice as compared to white voters.

27. Upon information and belief, the following are the names of the presently sitting judges' elected from the above counties:

<u>COURT</u>	<u>JUDGE</u>	<u>COUNTY</u>	VOTING PRECINCT	RACE/ ETHNIC
11th	Mark Davidson	Harris	224	W
55th	Reagan Cartwright	Harris	178	W
61st	Shearn Smith	Harris	**	W
80th	William R. "Bill Powel	Harris	040	W
113th	Geraldine B. Tennant	Harris	227	W
125th	Don E. Wittig	Harris	118	W
127th	Sharolyn P. Wood	Harris	282	W
129th	Hugo A. Touchy	Harris	385	W
133rd	Lamar McCorkle	Harris	**	W

151st	Alice Oliver Trevathan	Harris	441	W
152nd	Jack O'Neill	Harris	493	W
157th	Felix Salazar, Jr.	Harris	134	H
164th	Pete Solito	Harris	217	W
165th	Ken Harrison	Harris	413	W
174th	George H. Godwin	Harris	015	W
176th	James Brian Rains	Harris	116	W
177th	Miron A. Love	Harris	034	W
178th	William T. "Bill" Harmon	Harris	129	W
179th	J. Mike Wilkinson	Harris	456	W
180th	Patricia R. Lykos	Harris	626	W
182th	Donald K. Shipley	Harris	261	W
183th	Jay W. Burnett	Harris	567	W
184th	Robert N. Burdette	Harris	356	W
185th	Carl Walker, Jr.	Harris	138	B
189th	Richard W. Millard	Harris	056	W
190th	Wyatt H. Heard	Harris	227	W
208th	Thomas H. Routt	Harris	136	B
209th	Michael T. McSpadden	Harris	148	W
215th	Eugene Chambers	Harris	663	W
228th	Ted Poe	Harris	658	W
230th	Joe Kegans	Harris	222	W
232rd	A.D. Azios	Harris	178	H
234th	Ruby K. Sondock	Harris	434	W
245th	Henry G. Schuble	Harris	305	W
246th	John W. Peavy, Jr.	Harris	228	B
247th	Charles Dean Huckabee	Harris	628	W
	Woody R. Densen	Harris	034	W
248th	Norman R. Lee	Harris	628	W
257th	Doug Shaver	Harris	200	W
262nd	Charles J. Hearn	Harris	351	W
263rd	W. David West	Harris	219	W
269th	Ann Tyrrell Cochran	Harris	217	W
270th				

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280th	Melinda Furche Harmon	Harris	129	W
281st	Louis M. Moore	Harris	297	W
295th	Dan Downey	Harris	441	W
308th	Bob W. Robertson	Harris	430	W
309th	John D. Montgomery	Harris	518	W
310th	Allen J. Daggett	Harris	577	W
311th	Bill Elliott	Harris	221	W
312th	Robert S. Webb, III	Harris	200	W
313th	Robert L. Lowery	Harris	371	W
314th	Robert R. Baum	Harris	296	W
315th	Eric G. Andell	Harris	183	W
333rd	Davie L. Wilson	Harris	466	W
334th	Russel T. Lloyd	Harris	316	W
337th	Jim Barr	Harris	432	W
338th	Mary Bacon	Harris	344	W
339th	Norman E. Lanford	Harris	050	W
351st	Lupe Salinas	Harris	115	H
14th	John M. Marshall	Dallas	1174	W
44th	Candace Tyson	Dallas	1203	W
68th	Gary B. Hall	Dallas	1123	W
95th	Joe B. Brown	Dallas	4418	W
101st	Joseph B. Morris	Dallas	1227	W
116th	Frank Andrews	Dallas	1129	W
134th	Anne A. Packer	Dallas	1176	W
160th	Mark Whittington	Dallas	4418	W
162nd	Catherine J. Crier	Dallas	2277	W
191st	David Brooks	Dallas	2242	W
192nd	Merrill L. Hartman	Dallas	2266	W
193rd	Michael J. O'Neill	Dallas	2260	W
194th	Harold Entz, Jr.	Dallas	1185	W
195th	Joe Kendall	Dallas	1171	W
203rd	Thomas B. Thorpe	Dallas	1103	W
204th	Richard D. Mays	Dallas	1148	W
254th	Dee Miller	Dallas	1176	W
255th	Don D. Koons	Dallas	1227	W
256th	Carolyn Wright	Dallas	3302	B
265th	Keith T. Dean	Dallas	1122	W

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282nd	Tom Price	Dallas	1202	W	
283rd	Jack Hampton	Dallas	2271	W	
291st	Gerry Meier	Dallas	1209	W	
292nd	Michael E. Keasler	Dallas	4406	W	
298th	Adolph Canales	Dallas	1216	H	
301st	Robert O'Donnell	Dallas	2203	W	
302nd	Frances A. Harris	Dallas	2222	W	
303rd	N. Sue Lykes	Dallas	4437	W	
304th	Harold C. Gaither, Jr.	Dallas	4516	W	
305th	Catherine J. Stayman	Dallas	2253	W	
330th	Theo Bedard	Dallas	1185	W	
Crim	Ron Chapman	Dallas	2241	W	
Dist. 1	Crim	Larry W. Baraka	Dallas	4453	B
Dist. 2	Crim	Mark Tolle	Dallas	1187	W
Dist. 3	Crim	Frances J. Maloney	Dallas	1145	W
Dist. 4	Crim	Pat McDowell	Dallas	1162	W
70th	Gene Ater	Ector	**	W	
161st	Tryon D. Lewis	Ector	**	W	
244th	Joseph Connally	Ector	**	W	
358th	Bill McCoy	Ector	**	W	
19th	Bill Logue	McLennan	**	W	
54th	George H. Allen	McLennan	**	W	
74th	Derwood Johnson	McLennan	**	W	
170th	Joe Johnson	McLennan	**	W	
17th	Fred W. Davis	Tarrant	2052	W	
48th	William L. Hughes, Jr.	Tarrant	2143	W	
67th	George Allen Crowley	Tarrant	4095	W	
96th	Jeff Walker	Tarrant	3101	W	
141st	Dixon W. Holman	Tarrant	2266	W	

153rd	Sidney C. Farrar, Jr.	Tarrant	4130	W
213rd	George S. Kredell	Tarrant	2352	W
231st	Maryellen W. Hicks	Tarrant	1104	B
233rd	William H. Brigham	Tarrant	3151	W
236th	Albert L. White, Jr.	Tarrant	1004	W
297th	Everett Young, Jr.	Tarrant	1004	W
322nd	Frank W. Sullivan, III	Tarrant	3151	W
323rd	Scott D. Moore	Tarrant	4343	W
324th	Brian A. Carper	Tarrant	2012	W
325th	Robert L. Wright	Tarrant	1081	W
342nd	Joe Bruce Cunningham	Tarrant	1081	W
348th	Michael D. Schattman	Tarrant	3151	W
352nd	Bruce Auld	Tarrant	3286	W
360th	V. Sue Koenig Stephenson	Tarrant	3289	W
Crim				
Dist.1	Louis E. Sturns	Tarrant	4203	B
Crim				
Dist.2	Lee Ann Dauphinot	Tarrant	1189	W
Crim				
Dist.3	Don Leonard	Tarrant	1004	W
Crim				
Dist.4	Joe Drago, III.	Tarrant	1022	W
142nd	Pat M. Baskin	Midland	205	W
238th	Van Culp	Midland	307	W
318th	Dean Rucker	Midland	212	W
53rd	Mary Pearl Williams	Travis	237	W
98th	Jeanne Mourer	Travis	207	W
126th	Joe Hart	Travis	320	W
147th	Mace B. Thurman, Jr.	Travis	256	W
167th	Bob Jones	Travis	328	W
200th	Paul R. Davis Jr.	Travis	320	W
201st	Jerry Dellana	Travis	324	W

250th	Harley Clark	Travis	145	W
261st	Peter M. Lowry	Travis	326	W
299th	Jon N. Wisser	Travis	262	W
331st	Robert A. Perkins	Travis	215	W
345th	Scott McCown	Travis	236	W
353rd	Joe Dihrell	Travis	328	W
58th	Ronald L. Walker	Jefferson	73	W
60th	Gary Sanderson	Jefferson	83	W
136th	Jack R. King	Jefferson	5	W
172nd	Thomas A. Thomas	Jefferson	46	W
252nd	Leonard L. Giblin, Jr.	Jefferson	9	W
279th	Robert P. Walker	Jefferson	46	W
317th	James M. Farris	Jefferson	62	W
Cirm.				
Dis.Ct.	Lawrence Gist	Jefferson	65	W
10th	Ed. Harris	Galveston	**	W
56th	Allan Lerner	Galveston	**	W
122nd	Henry G. Delchite	Galveston	**	W
212th	Roy C. Engelke	Galveston	**	W
306th	Andrew Z. Baker	Galveston	**	W
72nd	Blair Cherry	Lubbock	9	W
99th	Thomas L. Olinlye	Lubbock	11	W
137th	Cecil G. Puryear	Lubbock	18	W
140th	William R. "Bill" Shaver	Lubbock	28	W
237th	John R. McFall	Lubbock	17	W
240th	Charles A. Dickerson	Fort Bend	**	W
268th	Brady G. Elliott	Fort Bend	**	W
328th	Thomas O. Stansbury	Fort Bend	**	W
7th	W.E. "Bill" Coats	Smith	16	W
114th	Cynthia Stevens Kent	Smith	37	W
241st	Joe Tunnell	Smith	51	W
321st	Ruth Jackson Blake	Smith	38	W
37th	John Cornyn, III	Bexar	3020	W
45th	Carol R. Haberman	Bexar	3079	W

57th	Charles Gonzales	Bexar	3019	H
73rd	Paul Andrew Mireles	Bexar	3011	H
131st	Rose Spector	Bexar	3018	W
144th	Susan Reed	Bexar	3018	W
166th	Peter Michael Curry	Bexar	3025	W
175th	Phil G. Chavarria, Jr.	Bexar	3019	H
186th	James E. Barlow	Bexar	2009	W
187th	Pat Priest	Bexar	3063	W
224th	Carolyn H. Spears	Bexar	3104	W
225th	John J. Specia, Jr.	Bexar	3048	W
226th	Sid L. Harle	Bexar	3102	W
227th	Mike Machado	Bexar	3038	H
285th	Michael Peden	Bexar	3074	W
288th	Raul Rivera	Bexar	3012	H
289th	Tom Rickoff	Bexar	3089	W
150th	Carleton Spears	Bexar	3108	W
290th	Sharon Sands Mac Rea	Bexar	3090	W
41st	Mary Ann Bramblett	El Paso	088	W
65th	Eduardo S. Marquez	El Paso	**	H
120th	Brunson D. Moore	El Paso	013	W
168th	Jose Troche	El Paso	005	H
171st	Peter S. Pecas	El Paso	006	H
243rd	Herbert E. Marsh, Jr.	El Paso	093	W

346th	Jose J. Baca	El Paso	011	H
327th	Enrique H. Pena	El Paso	012	H
34th	William E. Moody	Hudspeth, Culberson, El Paso	007	W
		(El Paso County)		
205th	Sam W. Callan	Hudspeth, Culberson, El Paso	074	W
210th	Sam M. Paxson	Hudspeth, Culberson, El Paso	011	W
		(El Paso County)		

*W-White **This information is being gathered
B-Black
H-Hispanic

VII. CAUSES OF ACTION

28. The present at large scheme of electing district judges, in the targeted areas, intentionally created and/or maintained with a discriminatory purpose, violates the civil rights of Plaintiffs by diluting their votes, in violation of the United States Constitution and/or,

29. The present at large scheme of electing district judges, in the targeted areas, results in a denial or abridgement of the right to vote of the Plaintiffs on account of their race or color in that the political processes leading

to nomination or election of district judges are not equally open to participation by Plaintiffs in that they have less opportunity than other members of the electorate to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

VIII. IMMUNITIES

30. Qualified and absolute immunity do not protect the Defendants because Plaintiffs seek only injunctive and declaratory relief and attorneys' fees. Furthermore, absolute immunity does not protect Defendants because they do not act in any of the capacities which receive immunity at common law. The Defendants are not entitled to Eleventh Amendment immunity because Plaintiffs seek only injunctive and declaratory relief and attorneys' fees.

IX. EQUITIES

31. Plaintiffs have no adequate remedy at law other than the judicial relief sought herein, and unless the Defendants are enjoined from continuing the present at large scheme, Plaintiffs will be irreparably harmed by the continuing violation of their statutory and constitutional

rights. The illegal and unconstitutional conditions complained of preclude the adoption of remedial provisions by the electorate. The present electoral scheme is without any legitimate or compelling governmental interest and it arbitrarily and capriciously cancels, dilutes and minimizes the force and effect of the Plaintiffs' voting strength.

XX. ATTORNEYS' FEES

32. In accordance with 42 U.S.C. 1973-*i*(e) and 1988, Plaintiffs are entitled to recover reasonable attorneys' fees as part of their costs.

XI. PRAYER

33. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein; that a declaratory judgment be issued finding that the existing method of electing district judges is unconstitutional and/or illegal, null and void; that the Defendants be permanently enjoined from calling, holding, supervising or certifying any further elections for district judges under the present at large scheme; that the Court order that district judges in the targeted counties be elected in a system which

contains single member districts; adjudge all costs against Defendants, including reasonable attorneys' fees; retain jurisdiction to render any and all further orders that this Court may from time to time deem appropriate; and grant any and all further relief both at law and in equity to which these Plaintiffs may show themselves to be entitled.

Respectfully submitted,